



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 14, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0334

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 31388.

The City of Houston (the "city") received a request for information concerning the intersection of Buffalo Speedway and North Braeswood. The requestor is an attorney representing the estate and survivors of an individual killed in an automobile-pedestrian accident as he attempted to walk across Buffalo Speedway at North Braeswood. The attorney alleges that the accident was caused by the improper placement of traffic signs. The city asserts that all of the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

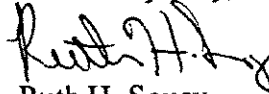
To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the TTCA or applicable municipal statute or ordinance. The attorney's letter indicates that he is making a claim under the TTCA against the city for wrongful death. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA. We have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the city has met its burden

of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3; 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the city could choose to release the information at this time. Gov't Code § 552.007. We also note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA or the applicable municipal statute or ordinance.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 31388

Enclosures: Open Records Decision No. 638 (1996))
Submitted document

cc: Mr. Joel Thomas
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2323 Two Houston Center
505 Fannin
Houston, Texas 77010
(w/enclosure ORD No. 638 (1996))